

SWIDLER
&
BERLIN

CHARTERED

June 1, 1998

RECEIVED

JUN 1 - 1998

DOCKET FILE COPY ORIGINAL

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

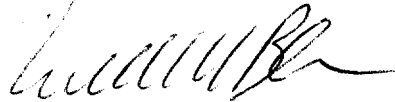
Re: CC Docket No. 98-56; RM-9101

Dear Secretary Salas:

GST Telecom, Inc., by counsel, hereby submits for filing its Comments in the above-referenced proceeding. Pursuant to the instructions set forth in paragraph 144 of the Notice of Proposed Rulemaking, enclosed for filing are an original and nine (9) copies of these Comments.

Please date-stamp the enclosed extra copy of the Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact us.

Very truly yours,



Russell M. Blau

Eric J. Branfman

Counsel for GST Telecom, Inc.

Enclosures

cc: Janice Myles, Common Carrier Bureau (w/ diskette)
International Transcription Service
Jeffrey Mayhook
Jane Delahanty

No. of Copies rec'd
List ABCDE

029

226049.1

3000 K STREET, N.W. ■ SUITE 300
WASHINGTON, D.C. 20007-5116

(202) 424-7500 ■ WWW.SWIDLAW.COM ■ FACSIMILE (202) 424-7645

ORIGINAL

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**DOCKET FILE COPY ORIGINAL
RECEIVED**

JUN 1 - 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of:

Performance Measures and
Reporting Requirements
for Operations Support Systems,
Interconnection, and Operator Services
and Directory Assistance

)
)
)
)
)
)
)

CC Docket No. 98-56
RM-9101

COMMENTS OF GST TELECOM, INC.

Russell M. Blau
Eric J. Branfman
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Attorneys for GST Telecom, Inc.

Dated: June 1, 1998

TABLE OF CONTENTS

EXECUTIVE SUMMARY	ii
COMMENTS OF GST TELECOM, INC	1
I. INTRODUCTION	1
II THE COMMISSION HAS THE STATUTORY JURISDICTION TO ADOPT AND ENFORCE STANDARDS GOVERNING NONDISCRIMINATORY ACCESS TO OSS SERVICES.	2
II THE BENEFITS OF ESTABLISHING PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS WILL OUTWEIGH THE BURDEN OF MONITORING PERFORMANCE AND FILING THE REPORTS.	5
IV. OVERVIEW OF SPECIFIC PERFORMANCE MEASUREMENTS	9
A. Frequency of Performance Reports	9
B. Comments on Specific Performance Measurements	10
1. Disaggregation of Ordering and Provisioning Data	10
2. Order Status Measurements	11
3. Installation Trouble Measurements	12
4. Collocation Measurements	14
5. Issues Regarding Availability of Raw Data	14
V. CONCLUSION	15

EXECUTIVE SUMMARY

The Comments of GST Telecom, Inc. ("GST") may be summarized as follows:

Jurisdiction and Enforcement: The Commission possesses jurisdiction under Section 251(c) of the Telecommunications Act of 1996 ("1996 Act") to define Operations Support Systems ("OSS") as an unbundled network element and to enforce the statutory requirement that access to such unbundled network elements be provided on a nondiscriminatory basis. If the Commission will not compel incumbent local exchange carriers ("ILECs") to adhere to the measurements adopted as a result of this proceeding, it should at least establish a date certain (no more than 18 months from its First Order in this docket) by which the Commission will reconsider whether binding rules would better serve the nondiscrimination mandate in the 1996 Act.

Benefits and Burdens: The Commission's proposals in this Notice constitute important steps toward fleshing out the vague nondiscrimination language contained in the 1996 Act. Although ILECs have both the incentive and the opportunity to discriminate in providing access to OSS, the adoption of OSS performance benchmarks will at least help to minimize the opportunity that currently exists for discrimination. By contrast, the Commission's proposals would not place any undue burden upon ILECs, and in fact, many of them could be considered generous to the ILECs in light of the fact that the ILECs have already failed to meet the January 1, 1997 deadline for implementing nondiscriminatory access to OSS that was established by prior Order. If the Commission believes, however, that its proposals would create too heavy a burden upon ILECs, it

should simply require quarterly reports rather than monthly reports. The Commission should not sacrifice the substantive quality of the reports for reports that are more frequent, but less detailed.

Overview of Specific Performance Measurements: GST generally applauds the Commission's detailed, pro-competitive proposals. GST's comments on several specific measurements or reporting requirements include the recommendations that: (i) ILECs should be required to impute notice in measuring CLEC notice intervals; (ii) ILECs should be required to explain the rationale for rejecting orders as invalid; (iii) ILECs should be required to distinguish between trouble reports that are caused by mechanical problems and trouble reports caused by ILEC processing error; (iv) orders should be tracked on a "per element" or "per circuit" basis; (v) ILECs should be required to report when they miss collocation due dates more than once; and (vi) ILECs should maintain and provide raw data to support their performance reports.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)	
)	
Performance Measures and)	CC Docket No. 98-56
Reporting Requirements)	RM-9101
for Operations Support Systems,)	
Interconnection, and Operator Services)	
and Directory Assistance)	

COMMENTS OF GST TELECOM, INC.

GST Telecom, Inc. ("GST"), by undersigned counsel and pursuant to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("Commission") on April 17, 1998, hereby submits its Comments in the above-captioned proceeding.¹

I. INTRODUCTION

GST is authorized to provide interexchange telecommunications services nationwide, and is also authorized to provide competitive local exchange services in nine states. GST has negotiated interconnection agreements to provide competitive local exchange service throughout much of US West's service territory, as well as in certain markets served by GTE and Pacific Bell.² GST is already making use of its authorizations and interconnection agreements to operate digital networks that currently serve cities in Arizona, California, Hawaii, New Mexico, Oregon, Texas, and Washington.

¹ GST is the parent company of a number of wholly-owned operating subsidiaries offering interexchange service, local exchange service, or both. For the limited purpose of these comments, any reference to GST may include one or more of these operating subsidiaries.

² GST's interconnection agreements have been approved by State commissions in Washington, Oregon, Idaho, Arizona, New Mexico, California, Nevada and Hawaii, Texas and Utah.

While GST is dedicating substantial resources to ensure that its own internal systems and facilities function properly, its ability to provide quality competitive local exchange services depends in large part upon the Operations Support Systems ("OSS") of incumbent local exchange carriers ("ILECs") who provide GST and other competitive local exchange carriers ("CLECs") access to unbundled network elements or resold services. When the ILECs provide substandard access to OSS, it is ultimately the CLEC who is blamed by its new customers for any service delay, notwithstanding the fact that a "behind-the-scenes" ILEC may very well be the source of the problem. GST and its customers therefore remain vulnerable to the perverse incentives and ability to discriminate that arises from ILEC bottleneck control in the ordering and installation of new service and in the maintenance and repair of existing service. Accordingly, GST welcomes Commission action in this area to ensure that ILECs provide nondiscriminatory access to OSS and allow CLECs to compete for consumers on the substantive merits and reasonable prices of their service offerings.

II. THE COMMISSION HAS THE STATUTORY JURISDICTION TO ADOPT AND ENFORCE STANDARDS GOVERNING NONDISCRIMINATORY ACCESS TO OSS SERVICES.

While the Commission has asked that parties not focus "exclusively on issues of jurisdiction,"³ the FCC's authority to require that ILECs provide nondiscriminatory access to OSS services must be addressed prior to any consideration of the FCC's substantive performance standard proposals. In its *Local Competition Order*, the Commission concluded that OSS and the information

³ *NPRM*, at ¶ 25.

contained in such systems “fall squarely within the definition of ‘network element’,” and accordingly that regulation of these items falls squarely within the Commission’s jurisdiction to enforce Section 251(c)(3) of the 1996 Act.⁴ Similarly, the Commission found that the provision of access to OSS functions fits within the scope of Section 251(c)(4) of the 1996 Act, as a part of services available for resale.⁵ In turn, the Commission found that the OSS functionality, whether considered a network element or a component of resold services, was therefore subject to the nondiscrimination requirements contained in both of those subsections.⁶ The Commission reaffirmed these separate conclusions in its Second Order on Reconsideration.⁷

A review of Section 251 confirms that there are several bases upon which the Commission may assert authority over the manner in which access to OSS is provided. Under Section 251(d)(1), for example, the Commission has been directed to take “all actions necessary to establish regulations to implement the requirements of this section.”⁸ Accordingly, the Commission has the ability to implement Sections 251(c)(3) and (c)(4) of the 1996 Act to require that ILECs provide CLECs with

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15763 (1996) (“*Local Competition Order*”), at ¶ 516.

⁵ *Local Competition Order*, 11 FCC Rcd at 15763, ¶ 517.

⁶ *Id.*

⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-96, Second Order on Reconsideration, FCC 96-476, at ¶ 9 (rel. Dec. 13, 1996).

⁸ 47 U.S.C. § 251(d)(1) (1996).

nondiscriminatory access to OSS as an unbundled network element or a component of resale. Similarly, under Section 251(d)(2), the Commission is instructed to consider “at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”⁹ The Eighth Circuit’s decision in the *Iowa Utilities Board* case does not affect the determinations with respect to OSS made by the Commission in its local competition docket. In fact, the Eighth Circuit confirmed that the Commission has the authority to define OSS as a network element.¹⁰ Thus, as an unbundled network element under the terms of the statute, OSS is subject to the nondiscrimination requirements set forth in Sections 251(c)(3) and (c)(4). To ensure that discrimination does not occur in the provision of access to OSS, this Commission should act to enforce the statutory prohibition on discrimination by adopting standards for OSS performance.

The Commission has indicated that even if it adopts performance measurements as a result of this proceeding, “[t]hese model performance measurements and reporting requirements would not be legally binding.”¹¹ According to the Commission, the experience it gains from developing the standards and reviewing how the measurements match ILEC performance “will enable us to decide

⁹ *Id.* at § 251(d)(2).

¹⁰ *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 808-09 (8th Cir. 1997), *cert. granted*, *AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998) (Mem.)

¹¹ *NPRM*, at ¶ 23.

whether to adopt national, legally binding rules in this area.”¹² While GST recognizes that the Commission wants time to evaluate the efficacy of these measurements and to work with state commissions regarding how standards should be further developed and implemented, GST believes that this Commission is best positioned, in terms of a national perspective and adequate resources, to establish and maintain performance measurements, reporting requirements, enforcement mechanisms, and a central clearinghouse to allow proper analysis of performance.¹³ Leaving future consideration of binding performance standards and technical standardization on an open-ended schedule may only result in delay in revisiting these important issues. Thus, GST recommends that if the Commission will not adopt binding standards and mandate technical standardization in the context of the immediate inquiry, it should establish a date certain (perhaps 6, 12, or 18 months) by which it will revisit this issue by analyzing the effectiveness of the measures ultimately adopted in this proceeding, inviting additional comment on these measures, and reviewing the ongoing work of the LCUG, ATIS, and other industry groups that are also considering these kinds of issues.

III. THE BENEFITS OF ESTABLISHING PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS WILL OUTWEIGH THE BURDEN OF MONITORING PERFORMANCE AND FILING THE REPORTS.

The Commission states that its objective in adopting performance measurements is “to gauge an incumbent LEC’s ability to provision the five OSS functions to competing carriers in terms of

¹² *Id.*, at ¶ 24.

¹³ *NPRM*, at ¶ 109.

timeliness, quality, and accuracy.”¹⁴ Even the measurement of “timeliness, quality, and accuracy,” however, is merely a means to an end. The adoption of measurements to gauge (and eventually standards to govern) ILEC performance in fact serves the purpose of fleshing out the vague prohibitions on discrimination contained in Sections 251(c)(3) and 251(c)(4). If the Commission does not take this opportunity to add some definition to the nondiscrimination standards in the 1996 Act, neither it nor any of the CLECs operating under the 1996 Act will ever have a clear picture of whether the treatment offered by the ILECs is nondiscriminatory and therefore contrary to law. Thus, performance measurements will help the Commission monitor and promote competitive developments under the 1996 Act, and also help ensure that CLEC customers do not suffer from inadequate service simply because they have exercised the competitive choice envisioned by the 1996 Act.

Indeed, the *incentive* and *opportunity* for ILEC discrimination in the provision of access to OSS is so great that the Commission has little choice but to measure in detail how the ILECs are performing. The ILECs’ *incentives* to engage in anticompetitive actions in terms of OSS processing and maintenance arise mainly from their dual roles as suppliers and competitors. To an ILEC, every customer order it successfully processes for a CLEC on the wholesale side is most likely another customer lost on the retail side. If the Commission will not or cannot address this inherent conflict and the perverse *incentives* that arise from it, it should at the very least consider how it can address the *opportunity* that ILECs currently have to provide substandard OSS. Detailed performance

¹⁴ *Id.*, at ¶ 32.

monitoring and reporting requirements will allow the Commission to minimize this opportunity, promote the development of competition in the local exchange marketplace, and ultimately benefit those consumers who want to exercise their ability to choose a competitive provider without any fear that the timeliness, accuracy, or quality of service will suffer.

There is no reason to believe that reporting requirements along the lines of those proposed in the *NPRM* will place any undue burden upon ILECs. In paragraph 107, the Commission proposes to limit the availability of each ILEC report to those CLECs who actually request a copy from the ILEC. Moreover, the proposed central clearinghouse from which CLECs and state commissions could obtain copies of reports as needed may further minimize any ILEC costs associated with producing reports to interested parties.¹⁵

Nor should the scope of the performance measurements prove to be unduly burdensome for the ILECs. If anything, the Commission's proposals are generous to the ILECs. In the *Local Competition Order*, the Commission ruled that ILECs needed to give fully nondiscriminatory access to OSS functions – meaning electronic access – no later than January 1, 1997.¹⁶ Yet here the Commission and the industry are, exactly seventeen months later, still trying to arrive at a means of ensuring nondiscriminatory access. To ask that the ILECs simply measure and report upon their performance and progress nearly a year-and-a-half after their performance was supposed to be optimal should not be seen as overly burdensome.

¹⁵ *NPRM*, at ¶ 109.

¹⁶ *Local Competition Order*, 11 FCC Rcd at 15766-77, ¶¶ 523, 525.

Indeed, consistent with the *Local Competition Order*, GST would advocate going farther than the Commission has gone here. Specifically, GST concurs with the Commission's expectation in the *Local Competition Order* that ILECs "should provide access to support systems through a nationally standardized gateway."¹⁷ Although the Commission has tentatively concluded in the present docket that "it is not necessary at this time for us to address the issue of uniform technical standards for OSS interfaces,"¹⁸ GST believes that technical standardization would provide an extremely valuable tool in comparing ILEC performance.¹⁹ When the Commission revisits the issue of translating the measurements adopted in this docket into binding standards (hopefully by some date certain), it should also revisit the question of appropriate technical standardization.

If the Commission remains concerned, however, that some burden may fall on the ILECs as a result of adopting performance measurements and reporting requirements, the Commission should proceed cautiously in attempting to minimize this perceived burden. For example, the Commission hints that a monthly reporting requirement may be too costly for ILECs, and asks for comment on whether quarterly reports might be appropriate.²⁰ Although GST believes that monthly reporting would not prove to be too difficult for the ILECs since most of the necessary information should be

¹⁷ *Id.*, at 15768, ¶ 527.

¹⁸ *NPRM*, at ¶ 127.

¹⁹ Technical standardization on a nationwide basis would also help to minimize the costs of competitive entry, since CLECs would need not worry about encountering a different OSS interface every time they enter a new market.

²⁰ *NPRM*, at ¶ 112.

maintained electronically, GST recommends that if the Commission is going to trim any of the requirements proposed in the *NPRM*, the Commission should reduce the frequency of the reports rather than sacrificing any of the substantive content of the reports.²¹ As discussed further below, the granular nature of the proposed performance measurements is essential in determining whether an ILEC is discriminating against competitors for any single kind of service or element. The quality of the reports should not be sacrificed for the quantity of the reports.

IV. OVERVIEW OF SPECIFIC PERFORMANCE MEASUREMENTS

GST applauds the Commission for proposing well-reasoned, detailed performance measurements in the *NPRM*. Below, GST offers comments on the frequency of performance reports as well as detailed comments on specific performance measurements.

A. Frequency of Performance Reports

The Commission properly enquires about whether it would be too burdensome to require ILECs to report data on performance measurements every month. As an alternative, the Commission proposes quarterly reporting.²²

GST supports the Commission's first proposal for monthly reporting because: (1) local telecommunications competition around the country is in a fledgling state; and (2) the burden of monthly reporting is not excessive. First, competition among local service providers is only

²¹ In fact, the Commission could require that the ILECs provide the necessary information in both a monthly and quarterly format within the quarterly reports.

²² See *NPRM*, at ¶ 112.

beginning to emerge in the nation. The entry and exit of different carriers in the market is measured in days and weeks, not months or years. Whether or not new entrants have reliable, effective and nondiscriminatory access to the operations support systems of ILECs ultimately will determine their success or failure in the market. The Commission's proposed regime of performance reports will play a critical role in averting discrimination on the part of incumbents. To delay those reports for up to three months at a time would render new entrants exceptionally vulnerable to the schemes of incumbents. The Commission should not take such a chance.

Second, the burden associated with producing monthly reports is hardly unwieldy or undue. Incumbents will perform many of the data collection and reporting functions via automated systems. The additional work involved in generating monthly reports as compared to quarterly reports likely will be insubstantial and not worth the risk of failing to detect ILEC discrimination in a timely manner.

Regardless of how the Commission resolves this issue, it should not sacrifice the substance of the reports in an effort to lighten the load of incumbents. Less frequent, comprehensive reports are always preferable to frequent, but diluted reports.

B. Comments on Specific Performance Measurements

1. Disaggregation of Ordering and Provisioning Data

Disaggregating the Commission's performance measurements is essential to identifying ILEC discrimination. If the measurements are insufficiently disaggregated, it will be difficult for

new entrants to assess whether an incumbent is providing them with a degraded level of access to operations support systems.

GST generally agrees with the Commission's proposal to use thirteen disaggregated categories for the majority of performance measures. However, GST believes that the loop category should be further disaggregated, as the Commission suggests, into two categories reflecting the basic and advanced properties of loops.²³ Otherwise, ILECs will have the opportunity to obscure discrimination against advanced loops with expedited treatment of basic loops. This kind of discrimination would discourage some of the more innovative new entrants from offering high bandwidth services and would slow the arrival of new technology to consumers.

2. Order Status Measurements

GST agrees with the Commission's tentative conclusions (1) to adopt the five order status measurements set forth in paragraph 59 of the NPRM and (2) to apply them to incumbent LECs' wholesale *and* retail operations. However, GST offers two additional comments. First, the Commission should require ILECs that do not provide themselves with the kinds of notice discussed in paragraph 59 to assume that they give such notice to themselves as soon as it would be practicable for them to do so. In other words, the Commission should deem an incumbent to have given itself notice as soon as its operations support systems have gathered the information that would be sufficient to render notice.

²³ *Id.*, at ¶ 50.

Second, the exclusion of "invalid" orders from the Average FOC Notice Interval will allow incumbents to game the system, unless the Commission places some restrictions on an incumbent's ability to claim that an order is invalid. GST supports requiring incumbents to supply a reason with each order rejection. With this restriction, it would be more difficult for incumbents to reject orders randomly and for purposes of skewing the data. CLECs who have had orders rejected also would be able to assess whether certain rejections were appropriate.

3. Installation Trouble Measurements

The Commission proposes a measurement for the Percentage of Troubles in Thirty Days for New Orders that it believes will act as a "substitute" measure of order accuracy. Specifically, the Commission hopes to measure how often incumbents simply provision orders incorrectly.²⁴ GST believes that the Commission's measurement as presently conceived will fall short of its goals. At a minimum, the measurement must differentiate between mechanical problems and inaccurate processing of orders. The Commission worries that identifying the latter would require incumbent LECs to engage in the burdensome task of comparing order account profiles before and after provisioning.²⁵ The Commission's concern is misplaced. If the measurement is merely of the percentage of incorrectly provisioned orders reported in thirty days, no such comparison would be needed.

²⁴ *Id.*, at ¶ 68.

²⁵ *Id.*

The Commission enquires whether the Percentage of Troubles in Thirty Days for New Orders should be disaggregated in the same manner as the ordering and provisioning measurements.²⁶ GST believes that it should be disaggregated in like fashion. In that case, new entrants would be better able to detect discrimination, and yet the additional burden on incumbents who already would have to disaggregate numerous other measurements into the thirteen categories would not be incrementally significant.²⁷

The Commission concludes its discussion of this issue by asking that parties comment on whether incumbents should track orders on a "per order" basis or on the basis of each circuit or element ordered.²⁸ GST urges the Commission to adopt the second approach. If the ILEC incorrectly processes a single order for 100 unbundled loops, that error has at least the same impact as any errors in processing 100 individual orders for a single unbundled loop. If ILEC processing is tracked on a "per order" basis, however, there will be a moral hazard problem in which incumbents will not have to be vigilant in regard to provisioning large orders because any mistakes after the first will be ignored in the measurement process. Such an approach would severely undermine the benefits of disaggregating orders in the first place.

²⁶ *Id.*, at ¶ 69.

²⁷ Indeed, it is possible that the burden would be greater were incumbents to use a lower level of disaggregation for only a few measurements.

²⁸ *NPRM*, at ¶ 70.

4. Collocation Measurements

GST agrees with the Commission's proposed performance measurements related to collocation,²⁹ but supports adding an additional measurement. The Commission should require ILECs to report the percentage of collocation arrangements for which they missed the due date more than once. As the Commission is certainly aware, CLECs have experienced great difficulties obtaining physical collocation arrangements at certain sites around the country, primarily because incumbents have little incentive to perform the work properly or expeditiously. GST's proposed performance measurement would provide a much needed incentive to ensure that collocation arrangements are not unnecessarily or unduly delayed.

5. Issues Regarding Availability of Raw Data

To interpret and understand the performance reports submitted by incumbent LECs, new entrants as well as regulators must have access to the underlying raw data. Because most all of the data will be gathered and processed electronically, the burden upon incumbents of making the data available should not be substantial. Furthermore, to ensure that regulators and new entrants gain perspective on the status of access to operations support systems over time incumbents should maintain the raw data for a period of at least five years (which again should not be a sizeable burden due to the data's computerized nature). In fact, maintenance of such "historical" data for a period of five years or more may prove to be all the more important if the Commission decides that it will defer adoption of legally binding performance standards for some future date, since this information

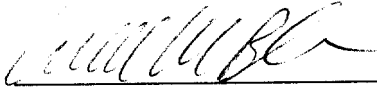
²⁹ *Id.*, at ¶ 102.

could be used by the Commission to then determine how ILECs have performed, the accuracy of the reports they have provided, and the need for binding requirements.

V. CONCLUSION

For the foregoing reasons, GST respectfully requests that the Commission adopt rules, performance measurements, and reporting requirements consistent with the principles herein.

Respectfully submitted,



Russell M. Blau
Eric J. Branfman
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Attorneys for GST Telecom, Inc.

Dated: June 1, 1998